

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 4:15 CR 0005 RLW (NAB)
)	
JOHN WEHRLE,)	
)	
Defendant.)	

**GOVERNMENT’S MOTION FOR A HEARING PURSUANT TO MISSOURI V. FRYE,
132 S.CT. 1399 (2012)**

COMES NOW the United States of America, by and through the United States Attorney for Eastern District of Missouri, Richard G. Callahan, and Jennifer J. Roy and Dianna Collins, Assistant United States Attorneys for said district, and requests that this Court schedule a hearing pursuant to *Missouri v. Frye*, 132 S.Ct. 1399 (2012), and in support of this request, states to the Court as follows:

1. This case is set for trial on March 7, 2016.
2. The government extended a final plea offer to the defendant through defense counsel, Sanford J. Boxerman, and asked that the defendant respond to that offer by December 24, 2015. The government did not receive a response by December 24, 2015.
3. On January 4, 2016, AUSA Roy again contacted defense counsel in an effort to confirm whether the defendant’s lack of response by December 24, 2015, meant that the defendant rejected the final plea offer and intended to proceed to trial. Defense counsel did not have a firm answer as to whether his client wanted a trial or intended to plead guilty and advised that his client may have additional documents that his client would like the government to review. The attorney

for the government advised defense counsel that the government intended to request a *Frye* hearing by the end of the week. Defense counsel advised that he would let the government know of any response from his client. As of today's date, the attorneys for the government have not received any documents from defense counsel and have not received a response from the defendant relative to this final plea offer.

4. As this Court is aware, this is a complex tax fraud investigation. Based on complexity of the case, as well as the number of out of town witnesses that will be called to testify in this case, it was the government's intent that the last plea offer expire on December 24, 2015. The December 24, 2015, deadline also took into account the fact that the attorneys for the government must obtain approval from the Department of Justice Criminal Tax Division for the current offer prior to initiating any change of plea hearing.

5. The government requests, therefore, that in light of the complexity of this case as well as the uncertainty concerning whether the defendant is aware of, understands, and has rejected the government's final plea offer, this Court hold a hearing as soon as possible with the defendant present to verify that the defendant is aware that the government had extended a plea offer and that the defendant did, in fact, reject the offer.

WHEREFORE, the United States of America requests that this Court set a hearing pursuant to *Frye* as soon as possible. The government is available on any date the Court schedules the hearing.

Respectfully submitted,

RICHARD G. CALLAHAN
United States Attorney

/s/Jennifer J. Roy

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CERTIFICATE OF SERVICE

A copy of the foregoing was served upon counsel for the defendant, Sanford J. Boxerman, via the District Court's electronic case filing system on January 7, 2016.

/s/Jennifer J. Roy

BY: JENNIFER J. ROY, 47203MO
Assistant United States Attorney